

BEFORE NANCY XEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

\* \* \* \* \*

MATTER OF THE	}	
TRANSPORTATION APPEAL OF JERRY	}	OSPI 194-91
AND AILEEN BROSTEN, FLOYD AND	}	
SANDY QUIRAM AND WILLIAM AND	}	<u>DECISION AND ORDER</u>
LYNN HAW, FLATHEAD COUNTY	}	

\* \* \* \* \*

STATEMENT OF TEE CASE

This is an appeal of the decision of the Flathead County Transportation Committee denying a request for an extension to Bus Route #3, Whitefish School District #44, on Spring Prairie Road. The extension was first denied by the Committee on January 22, 1991. That decision was appealed and came on for hearing before the Flathead County Transportation Committee on March 22, 1991, pursuant to section 20-10-132 (1)(d), MCA. Based on comparative safety issues, economic constraints and past practice, the Board reaffirmed their denial of January 22, 1991. (Transcript p. 46.) Findings of Fact, Conclusions of Law and Order were issued by a majority of the Committee on May 7, 1991. Dissenting votes were cast by three committee members. Timely appeal of that decision pursuant to section 20-10-132 (2), MCA, was made to this Superintendent.

Having reviewed the facts established at the county transportation committee hearing, this State Superintendent now makes the following decision:

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1 found to be arbitrary nor capricious. They did not abuse their  
2 discretion in denying the extension.

3 Section 20-10-132, MCA, states in pertinent part:

4 (1) It shall be the duty of the county  
transportation committee to:

5 (a) establish the transportation service areas  
6 within the county, without regard to district boundary  
7 lines, which will define the geographic area of  
responsibility for school bus transportation for each  
district that operates a school bus transportation  
program;

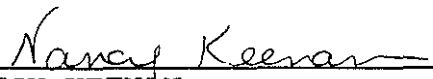
8 (b) approve, disapprove, or adjust the school bus  
9 routing submitted by the trustees of each district in  
conformity with the transportation service areas  
established in subsection (1)(a) . . . .

10 The statute confers considerable discretion on the  
11 transportation committee. In the committee's deliberations prior  
12 to a decision, the committee considered extensive testimony of  
13 knowledgeable witnesses, questioned them and became familiar with  
14 the physical layout of the area. They carefully weighed the  
15 concerns of safety regarding visibility, congestion at the  
16 current stop, improvements completed, grade, and turnaround for  
17 the bus. The record reflects conflicting opinions as to the  
18 degree of severity of the factors.

19 This Superintendent may not substitute her judgment for that  
20 of the Committee as to the weight of the evidence. Where the  
21 record contains conflicting testimony, credibility is decided by  
22 the finder of fact. Frazer School District No. 2 v. Flynn, \_\_\_\_  
23 Mont. \_\_\_\_, 732 P.2d 409, 44 St. Rptr. 248 (1987). The finder of  
24 fact in this matter is the Flathead County Transportation  
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1 ommittee. They heard the evidence and concluded that under the  
2 xisting conditions, the denial of the extension was in the best  
3 nterests of the eligible transportees.

4 DATED this 4 day of November, 1991.

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7 NANCY KEENAN

8 CERTIFICATE OF SERVICE


9 THIS IS TO CERTIFY that on this 4th day of November, 1991,  
10 true and exact copy of the foregoing Decision and Order was  
mailed, postage prepaid, to the following:

11 Jerry and Aileen Brosten  
12 695 Spring Prairie Road  
Whitefish, MT 59937

Floyd and Sandy Quiram  
558 Spring Prairie Road  
Whitefish, MT 59937

13 William and Lynn Haw  
14 474 Spring Prairie Road  
Whitefish, MT 59937

Dorothy Laird  
Flathead County Supt.  
723 5th Ave., Rm. 104  
Kalispell, MT 59901

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18 Scott Camobell  
19 Paralegal-Assistant  
20 Office of Public Instruction  
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